

REZA MOHD SHAH AHMAD SHAH

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v.

PP

COURT OF APPEAL, PUTRAJAYA

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ABDUL KADIR SULAIMAN JCA

ARIFIN ZAKARIA JCA

NIK HASHIM JCA

[CRIMINAL APPEAL NO: W-05-34-02]

13 OCTOBER 2005

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CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in cannabis - Whether there was an express and affirmative finding of possession against accused - Whether legal presumption of trafficking under s. 37(da) could be invoked - Whether a reduced charge of possession ought to be brought against accused - Dangerous Drugs Act 1952, s. 37(d), (da)*

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The appellant was charged in the High Court with trafficking in 795.3g of cannabis, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') punishable under s. 39B(2) of the Act. The learned trial judge found the appellant guilty and proceeded to convict him and sentenced him to death. The judge relied on the fact of actual possession of the substance without having to rely on the presumption provided by s. 37(d) of the Act, and upon an application of the presumption under s. 37(da) thereof (the substance being above the statutory minimum weight of 200 grams), found him to be trafficking in cannabis, having ruled that the appellant failed to raise any reasonable doubt as to the prosecution's case. This was the appellant's appeal against the conviction and sentence handed down by the learned judge. The facts of the case showed that there was no doubt that the appellant had custody and control of the cannabis; thus, the main consideration was whether the appellant had knowledge that he was carrying cannabis.

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Held (allowing the appeal)

Per Abdul Kadir Sulaiman JCA:

[1] The learned judge was incorrect in saying that there was no necessity for the prosecution to prove that the appellant had knowledge of the nature of the drug. By the operation of the Act, in relation to the charge, it was necessary for the prosecution to prove directly or inferentially that the appellant had knowledge of the nature of the dangerous drug he was carrying. On the facts, short of invoking the statutory presumption provided

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- a* by s. 37(d) of the Act upon the conduct of the appellant, no *prima facie* case had been made out against the appellant that he was in possession of cannabis with the requisite knowledge. In the circumstances, the issue of trafficking in the said dangerous drug would not at all arise as the issue of possession of the drug by the appellant was not made out by the
- b* prosecution, and since there was no express, affirmative finding of possession as understood in criminal law but for the legal presumption under s. 37(d) of the Act, the appellant could not be called to enter his defence on the trafficking charge. (pp 588 d, 589 b, d & 591 a)
- c* [2] However, with the aid of the statutory presumption under s. 37(d) of the Act, the prosecution had made out a *prima facie* case against the appellant for an offence under s. 6 of the Act for being in possession of cannabis, and as the weight of cannabis involved was more than 50 grams, he was liable to be punished under s. 39A(2) of the Act if found guilty. Consequently, the appellant ought to have been called to enter his defence
- d* for such possession. (p 589 e-f)
- e* [3] Considering the defence put up by the appellant, which was in substance a mere denial of the evidence led by the prosecution, the appellant had neither succeeded in rebutting the presumption raised against him under s. 37(d) of the Act nor raised any reasonable doubt as to his custody and control of the cannabis. The prosecution had, therefore, proved its case against the appellant on the reduced charge of possession beyond reasonable doubt. Consequently, the conviction for trafficking and the sentence of death against the appellant were substituted with a conviction for possession of cannabis under s. 6 of the Act and a sentence of 18
- f* years' imprisonment with a minimum of 10 strokes of the rattan as so provided by s. 39A(2) of the Act. (p 591 c-f)

[Order accordingly.]

[Bahasa Malaysia Translation Of Headnotes]

- g* Perayu telah dituduh di Mahkamah Tinggi kerana mengedar 795.3 gram ganja, suatu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta') yang boleh dihukum di bawah s. 39B(2) Akta. Yang arif hakim mendapati perayu bersalah dan dengan itu mensabitkan dan menjatuhkan hukuman mati
- h* ke atas perayu. Hakim bergantung kepada fakta milikan sebenar dadah tanpa perlu bergantung kepada anggapan s. 37(d) Akta dan, dengan memakai anggapan di bawah s. 37(da) (dadah melebihi berat minima statutori 200 gram), mendapati perayu melakukan kesalahan mengedar ganja, setelah memutuskan

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perayu gagal membangkitkan keraguan munasabah terhadap kes pendakwaan. Ini adalah rayuan perayu terhadap sabitan dan hukuman yang dicapai oleh yang arif hakim. Fakta kes menunjukkan bahawa adalah tidak diragukan bahawa perayu sememangnya mempunyai jagaan dan kawalan ke atas ganja tersebut; oleh yang demikian persoalan utama yang berbangkit adalah sama ada perayu mempunyai pengetahuan bahawa yang dibawanya itu adalah ganja.

Diputuskan (membenarkan rayuan)

Oleh Abdul Kadir Sulaiman HMR:

- [1] Yang arif hakim khilaf apabila mengatakan bahawa pendakwaan tidak perlu membuktikan bahawa perayu mempunyai pengetahuan mengenai sifat dadah tersebut. Berdasarkan Akta, berhubung dengan pertuduhan, pendakwaan perlu membuktikan, secara langsung atau pun melalui inferens, bahawa perayu mempunyai pengetahuan sifat dadah berbahaya yang dibawanya. Di atas fakta, tanpa mengguna anggapan statutori s. 37(d) Akta terhadap kelakuan perayu, tiada kes prima facie telah dibukti terhadap perayu bahawa dia mempunyai milikan ganja dengan pengetahuan berkenaan. Oleh yang demikian, isu mengedar dadah berbahaya tidak langsung berbangkit disebabkan isu milikan dadah oleh perayu tidak dibuktikan oleh pendakwaan, dan kerana tidak terdapat apa-apa dapatan afirmatif jelas mengenai milikan dibuat, kecuali bagi anggapan di bawah s. 37(d) Akta, berakibat perayu tidak boleh dipanggil untuk membela diri atas pertuduhan mengedar.
- [2] Bagaimanapun, dengan sokongan anggapan statutori di bawah s. 37(d) Akta, pendakwaan telah membuktikan kes prima facie terhadap perayu atas kesalahan memiliki ganja di bawah s. 6 Akta, dan oleh kerana berat ganja tersebut melebihi 50 gram, beliau boleh dihukum di bawah s. 39A(2) Akta jika didapati bersalah. Ianya mengikut bahawa perayu harus dipanggil untuk membela diri atas pemilikan dadah tersebut.
- [3] Mengambil kira pembelaan yang dikemukakan perayu, yang merupakan penyangkalan semata-mata terhadap keterangan-keterangan pendakwaan, perayu bukan sahaja gagal menyangkal anggapan di bawah s. 37(d) Akta yang berbangkit terhadapnya, malah gagal menimbulkan keraguan munasabah mengenai jagaan dan kawalan beliau ke atas ganja tersebut. Pendakwan, dengan itu, berjaya membuktikan kes mereka terhadap perayu atas pertuduhan milikan yang lebih ringan di luar keraguan munasabah. Dengan demikian, sabitan kerana mengedar dan hukuman mati yang dijatuhkan terhadap perayu adalah diganti dengan sabitan kerana memiliki ganja di bawah s. 6 Akta dan hukuman 18 tahun penjara dengan sebatan minima 10 sebatan sepertimana yang diperuntukkan s. 39A(2) Akta.

Perintah sekadarnya.]

a Case(s) referred to:

Muhammed Hassan v. PP [1998] 2 CLJ 170 FC (*refd*)

PP v. Mohd Farid Mohd Sukis & Anor [2002] 3 AMR 3457 (*refd*)

Sim Teck Ho v. PP [2000] 4 SLR 39 (*dist*)

Taib Mohamad v. PP [2002] 3 CLJ 680 CA (*refd*)

Toh Su Kuan v. PP [2005] 3 CLJ 740 CA (*refd*)

b Warner v. Metropolitan Police Commissioner [1969] 2 AC 256 (*refd*)**Legislation referred to:**

Dangerous Drugs Act 1952, ss. 6, 37(d), (da), 39A(2)

Drugs (Prevention of Misuse) Act 1964, s. 1

**c For the appellant - Edmund Bon (Nik Mohamed Ikhwan with him); M/s Chooi & Co
For the respondent - Meor Hashimi Abdul Hamid**

[Appeal from High Court, Kuala Lumpur; Criminal Trial No: 45-10-2001]

Reported by Suresh Nathan

d**JUDGMENT****Abdul Kadir Sulaiman JCA:**

The appellant was charged in the High Court with an offence of trafficking in dangerous drug, to wit, cannabis. The charge in Bahasa Malaysia is in the following terms:

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Bahawa kamu pada 14 Ogos 2000 jam lebih kurang 12.15 tengahari, di kawasan tanah rezab jalan keretapi, Jalan Pantai Dalam, Brickfields, Kuala Lumpur, Wilayah Persekutuan telah mengedar dadah berbahaya iaitu 795.3 gram cannabis dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

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After a full trial, the learned judge found the appellant guilty of the charge and proceeded to convict him accordingly. The judge relied on the fact of actual possession of the substance without having to rely on the presumption provided by s. 37(d) of the Dangerous Drugs Act 1952 ("the Act"), and upon the application of the presumption under s. 37(da) thereof, the substance being above the statutory minimum weight of 200 grammes, found him to be trafficking in the substance, having ruled that the appellant failed to raise any reasonable doubt as to the prosecution's case. The substance in this case is cannabis, a form of dangerous drug.

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This is an appeal by the appellant against his said conviction upon the charge and the mandatory sentence thereby imposed by the learned judge. We heard the appeal on 10 May 2005. At the end of it we allowed the appeal of the appellant by setting aside the decision of the learned judge and in its place we substituted with the finding of guilty upon a reduced charge of being in possession of cannabis under s. 6 and sentenced the appellant under the increased penalty provided by s. 39A(2) of the Act, to a term of 18 years imprisonment to take effect from the date of arrest, which was on 14 August 2000, with whipping of 10 strokes. We now provide our reasons for so doing.

The learned judge found actual possession of cannabis in the appellant on the evidence before him. The evidence of PW2 shows that the respondent was seen carrying exh. P3, a plastic bag, for some distance. When confronted, he ran and was seen throwing exh. P3 away. When recovered, exh. P3 was found to contain cannabis. As to the custody and control of exh. P3 in the appellant, on the evidence, there cannot be any doubt. Therefore, the remaining matter for his consideration is whether the appellant had knowledge that he was carrying the dangerous drug in respect of which he had been charged, ie, cannabis. In other words, the issue is whether the appellant had the knowledge that he was carrying cannabis. For such conduct of the appellant, which is running away when confronted and at the same time throwing away the plastic bag containing cannabis, the learned judge held:

The fact that the accused was carrying Exhibit P3 with its contents followed by the speed at which he ran and threw it upon being confronted show that there is a clear nexus between his conduct and the offence in question. He wanted to part possession with what constituted the offence. It is a clear indication of his guilty mind. This is sufficient to infer that the accused had knowledge of the existence of the dangerous drugs in Exhibit P3.

However, the learned judge was mindful that the inference drawn in this case that the appellant had knowledge of the existence of the dangerous drug does not suggest that he knew that it was cannabis. But relying on his own decision in the case of *PP v. Mohd Farid bin Mohd Sukis & Anor* [2002] 3 AMR 3457 following the Singapore case of *Sim Teck Ho v. PP* [2000] 4 SLR 39 he was satisfied that the appellant had knowledge of the existence of cannabis in exh. P3. He relied his findings on a *dicta* of Yong Pung How CJ in the case of *Sim Teck Ho, supra*, where the learned CJ said at p. 43:

- a* The appellant was charged with trafficking in a controlled drug, an offence under s. 5(1)(a) of the Misuse of Drugs Act (Cap 185) ('the Act'). Section 5(2) of the Act states that a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking. Section 17(c) of the Act provides a presumption concerning trafficking. It states that any person proved to have possession of more than 2g of diamorphine shall be presumed to have that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.
- b*

The learned CJ in *Sim Teck Ho, supra*, then cited the *dicta* of Lord Pearce in *Warner v. Metropolitan Police Commissioner* [1969] 2 AC 256, a decision of the House of Lords involving the meaning of 'possession' for the purpose of s. 1 of the Drugs (Prevention of Misuse) Act 1964 as follows:

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- I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance and mistake as to its qualities is not an excuse.

- d* In conclusion, the learned CJ said:

Therefore, in order to prove possession, the prosecution must prove that there is first, physical controlled over the control drug, and second, knowledge of the existence of the thing itself, that is the existence of the controlled drug, but not the name or nature of the drug.

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- Thus, relying on those cases in the House of Lords and in the Singapore Court, the learned judge, in our present case, followed the decision he made in *PP v. Mohd Farid bin Mohd Sukis & Anor, supra*, where he concluded at p. 3483 thus:

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- It must be observed that in proving this element the obligation of the prosecution is only to establish that the accused had knowledge, either by direct evidence or by way of inference, the existence of the dangerous drug but not its qualities.

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- Having gone through the report in *Sim Teck Ho, supra*, ourselves, we are of the view that the case can be easily distinguished from the present case before us on the peculiar facts and circumstances prevailing in the case. The Singapore Court of Appeal in that case affirmed the decision of the High Court at first instance. Refer to paras. 5 to 9 of the report, in particular, for the reasons.

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- In our view, owing to the peculiar facts and circumstances presenting themselves in the Singapore case, without having to resort to any statutory presumption, the accused there can safely be inferred to have been in possession of the controlled drugs, diamorphine, and to have known the nature

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of the controlled drugs. However, in our present case, the inference of possession of cannabis and the knowledge by the appellant that the dangerous drug contained in exh. P3 is cannabis was deduced only from the fact that the appellant 'was carrying exh. P3 with its contents followed by the speed at which he ran and threw it upon being confronted' which according to the learned judge would show that there is a clear nexus between his conduct and the offence in question. From the facts the learned judge was of the view that the appellant wanted to part possession with what constituted the offence and a clear indication of his guilty mind which is sufficient to infer that the appellant had knowledge of the existence of the dangerous drug which in this case is cannabis in exh. P3 but without little realizing that from the conduct of the appellant it could also clearly be inferred that he could have behaved in the manner he did in respect of any other offence relating to what was contained in exh. P3.

In support of the findings of the learned judge on the issue of possession of the dangerous drugs, cannabis, the learned deputy for the respondent, submitted that the appellant was seen by the police ambush team headed by PW2 carrying in his right hand exh. P3 which contained dangerous drug. The appellant's movement was under surveillance of the ambush team and was seen walking alone in a suspicious manner. When the word 'Polis' was uttered he took flight. In the course of it, the appellant threw to the ground the plastic bag he was then carrying. The said bag was subsequently found to contain cannabis. So, on the facts, the learned deputy submitted that the said dangerous drug, was in his possession. The appellant's action in running away when confronted, and at the same time throwing away the plastic bag can be inferred that the appellant had the knowledge that the plastic bag contained the dangerous drug. By running away it shows that the appellant had the knowledge in regard to the drug in the plastic bag. By throwing away the plastic bag, the appellant wanted to part with possession of the drug.

But in our view, just because the appellant took flight and threw the plastic bag containing dangerous drug does not point to one and only conclusion that he knew what he was carrying was the dangerous drug, cannabis. In the circumstances, other inferences can be made such as that he did so because he may be carrying any other prohibited goods other than cannabis or that he was panicky and therefore chose to run away and throw out the bag he was carrying more so, in this case, when the police who confronted him were not in uniform. In *Toh Su Kuan v. PP* [2005] 3 CLJ 740 where the circumstances were very much stronger against the accused in that case than those in the present case but this court held that they were insufficient to constitute proof of possession of the very drug stipulated in the charge. The accused in that case was charged with the capital offence of trafficking in 1,584.93 grammes

- a* of heroin and was sentenced to death in the High Court. The evidence for the prosecution was that the drug was found in 356 packets in different parts of the accused's person: 62 packets in the left shoe, 60 packets in the right shoe, 57 packets strapped to the left shin, another 57 packets strapped to the right shin, 60 packets tied to the waist in front and 60 packets fastened to the waist at the back. This court there said as follows:
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- c* In our judgments, the manner in which the packets were fastened to the appellant's person shows at the highest that he had knowledge the packets contained some prohibited substance, perhaps, drugs or perhaps some other substance which was unlawful to have in one's possession. But it certainly does not prove that the appellant knew the packets contained heroin, the drug which forms the subject matter of the charge.

- The learned judge in his judgment at p. 22 of the Appeal Record said that in the nature of the charge, it is not necessary for the prosecution to prove that the appellant had knowledge of the nature of the drug. With respect, we cannot agree with such conclusion. By the operation of our Dangerous Drugs Act 1952, in relation to the charge, it is necessary for the prosecution to prove directly or inferentially that the appellant had the knowledge of the nature of the dangerous drug he was carrying in the plastic bag. Knowledge in a person is a thing which cannot be seen or perceived. It can be deduced only from the overt act or conduct short of his own admission. The legislature in its wisdom, realizing the difficulty of establishing by direct evidence of this fact of knowledge, introduced a statutory presumption which is rebuttable, by way of s. 37(d) of the Act. In *Taib bin Mohamad v. Public Prosecutor* [2002] 3 CLJ 680, this court said at p. 684:
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- f* We have examined the evidence adduced in the case at the prosecution stage of the trial to see if the facts disclosed that the accused had actual knowledge of the nature of the drugs so that the judge could have relied on such facts to infer knowledge without resorting to s. 37(d) of the Act in which case the invoking of the presumption of trafficking under s. 37(da) of the Act would have been correct in law. We did not find sufficient evidence for the judge to infer that the accused had knowledge that the material was cannabis. ... the mere throwing of the bag without more cannot constitute knowledge of the contents of the bag. ...
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- h* There being no evidence from which his knowledge of the drugs could be inferred, the learned judge could not and should not have called the accused to make his defence on the charge of trafficking but the accused because of the presumption of knowledge of the drug raised under s. 37(d) of the Act, could be called upon his defence on a charge of possession of the cannabis.

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Therefore, upon the conduct of the appellant, only the statutory presumption in s. 37(d), can assist the prosecution to deem the appellant to have been in possession of such drug, cannabis and to have known that exh. P3 contained cannabis, the subject matter of the charge. However, the learned judge and the prosecution did not avail themselves of the provisions of s. 37(d) thereof. So, on the facts, we disagreed with the learned judge that in the present case involving the appellant, he could be inferred to have the knowledge that what he possessed was the dangerous drug, cannabis. Short of invoking the statutory presumption provided by s. 37(d) upon the conduct of the appellant, no *prima facie* case has been made out against the appellant that he was in possession of cannabis with the requisite knowledge.

Now, having erroneously inferred from the conduct of the appellant to have produced direct evidence of possession of cannabis in him, the learned judge upon the weight of the cannabis found, invoked the presumption contained in s. 37(da) thereof thereby presuming the appellant to have been trafficking in such dangerous drug. But as correctly pointed out by the learned judge, the prosecution must first establish that the appellant was in possession of the dangerous drugs before the issue of trafficking in them can arise for consideration. In the circumstances of the view we formed, the issue of trafficking in the said dangerous drug would not at all arise as the issue of possession of the drug by the appellant was not made out by the prosecution.

However, that is not the end of the matter in that the appellant ought to be acquitted entirely of the charge. As stated earlier, there is no direct evidence of possession with the requisite knowledge based on the evidence tendered. But, with the aid of the statutory presumption provided by s. 37(d) of the Act, on the facts, the prosecution had made out a *prima facie* case for an offence under s. 6 of the Act for being in possession of the said dangerous drug, cannabis, and as the weight of cannabis involved is more than 50 grammes, is liable to be punished under s. 39A(2) of the Act, if found guilty. Consequently, the appellant ought to have been called to enter his defence for such possession.

To digress, a question may be asked. Now that with the aid of the statutory presumption provided by s. 37(d) of the Act, knowledge of the possession of cannabis is imputed on the appellant, why cannot the appellant be proceeded with the trial for the offence of trafficking by invoking another statutory presumption under s. 37(da)(vi) of the Act, as the weight of cannabis possessed was 200 grammes or more? The answer to that is to be found in the celebrated decision of *Muhammed Hassan v. Pendakwa Raya* [1998] 2 CLJ 170. The facts are similar to the present case against the appellant in our present case. On the evidence, the learned trial judge held that a *prima facie* case had been

- a* made out against the accused and that the prosecution had also successfully raised the statutory presumptions under s. 37(d) and (37(da) of the Act. The learned trial judge then called on the accused to enter upon his defence on a trafficking charge. On the totality of the evidence, the learned trial judge found that the accused had failed to raise any reasonable doubt on the prosecution's
- b* case and had failed to rebut the statutory presumptions under s. 37(d) and 37(da) on a balance of probabilities. The accused was accordingly found guilty of the offence of trafficking and was accordingly convicted. The accused appealed. The Federal Court in disposing the appeal held at p. 191 as follows:

- c* In our view, to constitute 'possession' under s. 37(da) of the Act, so as to be capable of forming one of the ingredients thereunder thereby giving rise to the presumption of trafficking, there must be an express affirmative finding (as opposed to legal presumption) of possession as understood in criminal law, based on evidence.

Continuing at p. 194, the Federal Court ruled as follows:

- d* In our view, on the wording of s. 37(da) as it stands, to read the presumption of possession (ie, possession as understood in criminal law, with knowledge) provided in s. 37 (d) into s. 37(da) so as to invoke against an accused a further presumption of trafficking (ie, presumption upon presumption) would not only be ascribing to the phrase 'found in possession' in s. 37(da) a meaning wider
- e* than it ordinarily bears but would also be against the established principles of constructions of penal statutes and unduly harsh and oppressive against the accused. We are not unaware that, as a general principle, a statute may place the burden of proof on an accused by necessary implication and without doing so expressly. This depends on the construction of the particular legislation. But
- f* a court should be extremely cautious and slow to infer from a statute that Parliament intended to impose on the defendant an onerous duty to prove his innocence in a criminal case. Furthermore, offences involving the trafficking of dangerous drugs are among the most serious in a criminal calendar. Any ambiguity in s. 37(da) should be resolved in favour of the accused by placing the burden of proving possession of the substances involved on the prosecution.
- g* We would further add that in so construing as we do, we see no injustice to the prosecution. In a proper case where the evidence so warrants and the amount of the dangerous drugs reaches or exceeds the quantity specified in s. 37(da), there is nothing to prevent a trial court from coming to a factual finding of possession as understood in criminal law thereby attracting the presumption of trafficking under the said s. 37(da) which, of course, is rebuttable.
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Accordingly, we held that the learned trial judge had erred in law in using the presumption of possession under s. 37(d) of the Act to invoke the presumption of trafficking under s. 37(da) thereof.

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Reverting back to our present case involving the appellant, on the view we expressed earlier, there is no express affirmative finding of possession as understood in criminal law but for the legal presumption under s. 37(d) of the Act, the appellant cannot be called to enter his defence on the trafficking charge.

But having called for the appellant to enter his defence on the original charge of trafficking in such drug and heard the evidence tendered by the appellant, the learned judge convicted him on the charge of trafficking in the dangerous drug, cannabis. On our part, upon the view we took, the appellant's defence at the trial should have been considered as a defence on the reduced charge of possession in the dangerous drug, cannabis. Considering the defence put up by the appellant which in substance was a mere denial of the evidence led by the prosecution particularly the carrying and the throwing away of exh. P3, we were of the view that the appellant had not succeeded in rebutting the presumption raised against him under s. 37(d) of the Act. Neither has the appellant raised any reasonable doubt as to his custody and control of exh. P3 which contained the dangerous drug, cannabis. We were therefore, satisfied that the prosecution had proved its case against the appellant on the reduced charge of possession, beyond reasonable doubt. Consequently, we found the appellant to be guilty of an offence under s. 6 of the Act and it is for these reasons we allowed the appeal against the conviction on trafficking and the sentence of death and substituted therefor a conviction for possession of cannabis under s. 6 of the Act and sentenced him to 18 years imprisonment to take effect from the date of arrest, which was on 14 August 2000, plus the minimum of 10 strokes of the rattan as so provided by s. 39A(2) of the Act, which we considered as fair in the circumstances of the case, after considering the submissions on the sentence to be imposed, from the learned counsel for the appellant on his behalf and from the learned deputy for the respondent.

My learned brothers, Arifin bin Zakaria and Nik Hashim bin Nik Ab. Rahman, JJCA have read this judgment in draft and concurred with it.